

## **SPECIAL THIRD DIVISION**

**[ CA-G.R. CR No. 35651, May 23, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DELIA MOLINA, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**GARCIA, R. R. J.:**

Before Us is an appeal from the Joint Decision<sup>[1]</sup> dated January 31, 2013, of the Regional Trial Court, Branch 145, Makati in Criminal Cases Nos. 08-151 and 08-154 finding herein accused-appellant Delia Molina guilty beyond reasonable doubt of the crime of simple illegal recruitment, the dispositive portion of which reads:

WHEREFORE, finding the accused DELIA C. MOLINA GUILTY beyond reasonable doubt of the crime of Simple Illegal Recruitment in the two criminal cases Nos. 08-151 and 08-154, she is sentenced to suffer, for each case, an indeterminate prison term of six years and one (1) day as minimum, to twelve (12) years, as maximum, and to pay a fine of Two Hundred Thousand Pesos (P200,000.00) for each case or a total amount of Four Hundred Thousand Pesos (P400,000.00) for the two cases, and to pay by way of civil liability: HELEN PARAS in Criminal Case No. 08-151, the amount of Eighty Five Thousand Pesos (P85,000.00), and MICHAEL NARLY FUENTES in Criminal Case No. 08-154, the amount of One Hundred Fifty Thousand Pesos (P150,000.00), both of whom are entitled to recover from the accused an interest at twelve percent (12%) per annum of the said principal amount, reckoned from the filing of the information until fully paid, and for the said accused to pay the costs of suit.

SO ORDERED.<sup>[2]</sup>

### **THE FACTS**

In two Informations<sup>[3]</sup>, both dated November 16, 2007, filed before the Regional Trial Court, Branch 145, Makati City, accused-appellant Delia Molina and her co-accused Angelita Palabay and Roland Salilin were charged with two counts of illegal recruitment defined and penalized under Sections 6(l) and 6(m) of RA No. 8042, otherwise known as the *Migrant Workers Overseas Filipino Act of 1995*, committed as follows:

#### **CRIM. CASE NO. 08-151**

That in or about and sometime in February 2006, in the City of Makati, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, did then and there willfully unlawfully and

feloniously, recruit promise employment/job placement and collects fees from complainants, RITCHIE SOTTO, JIMMY B. ULITIN, PERCIVAL C. TOLBE, LENDIE M. LAGARE, ZENAIDA LEGASPI, CERILDA BAURA and HELEN A. PARAS as factory workers in Korea and in consideration of said promise, collected from complainants the amount of P75,000.00 each as placement/processing [fees], and then and there fail to actually deploy without valid reason said complainants, and despite demand to reimburse or return the said amounts, said accused failed and refused to reimburse the expenses incurred by the said complainants, thus, in large scale amounting to economic sabotage and no authority or license to recruit workers for abroad.

CONTRARY TO LAW.<sup>[4]</sup>

CRIM. CASE NO. 08-154

That in or about and sometime in February 2006, in the City of Makati, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, did then and there willfully unlawfully and feloniously, recruit promise employment/job placement and collects fees from complainants, MICHAEL NARLY FUENTES as factory worker in Korea and in consideration of said promise, collected from complainant the amount of P150,000.00 each as placement/processing [fees], and then and there fail to actually deploy without valid reason said complainants, and despite demand to reimburse or return the said amounts, said accused failed and refused to reimburse the expenses incurred by the said complainants, thus, in large scale amounting to economic sabotage and no authority or license to recruit workers for abroad.

CONTRARY TO LAW.<sup>[5]</sup>

During the arraignment on March 6, 2007, appellant, with the assistance of counsel, pleaded *not guilty*.<sup>[6]</sup> On the other hand, Angelita Palabay, the co-accused in Crim. Case No. 08-151, and Rolando Sililin, the co-accused in Crim. Case No. 08-154, both remain at-large to date.

During the trial, the prosecution presented two (2) witnesses, namely: private complainant Helen Paras<sup>[7]</sup> and private complainant Michael Narly Fuentes<sup>[8]</sup>.

The version of the prosecution may be summarized as follows:

Appellant Delia Molina is the President and CEO of Southern Cotabato Landbase Management Corporation (SCLAMCOR, for brevity), a recruitment agency holding office in Makati City.

Sometime in 2006, private complainant Helen Paras went to the office of SCLAMCOR to apply for employment as a factory worker in Korea. She was assisted therein by accused Angelita Palabay, who introduced herself as the Treasurer of SCLAMCOR. She paid the total amount of P85,000.00 as placement fee to accused Palabay, as evidenced by Cash Voucher<sup>[9]</sup> dated August 22, 2006 for P30,000.00 and Cash Voucher<sup>[10]</sup> dated August 30, 2006 for P55,000.00. A month later, private complainant Paras went back to the SCLAMCOR office to follow up her job

deployment. She was assured by accused Palabay that her application was being processed so they would have to wait. However, the office closed down sometime in 2007 without private complainant Paras' deployment.

Meanwhile, sometime in May 2006, private complainant Michael Narly Fuentes also went to the office of SCLAMCOR in Makati City to apply for a job for himself and his sister Monaliza Fuentes as factory workers in Pusan, Korea. There, he transacted with accused Rolan Salilin who introduced himself as one of the owners of SCLAMCOR. Accused Salilin said that before deployment, private complainant Fuentes and his sister must pay P75,000.00 each as partial payment of the placement fee, while the remaining balance would be paid after the issuance of passport. They would also have to learn the Korean language. On July 3, 2006, private complainant returned to the SCLAMCOR office to pay the partial placement fee, as evidenced by two Cash Vouchers<sup>[11]</sup> for the total amount of P150,000.00. He was then instructed by accused Salilin to wait for three months. Even after private complainant Fuentes and his sister complied with the language requirement, however, they were still not deployed. On November 2006, he returned to the SCLAMCOR office to follow up their application. Accused Salilin and appellant both assured him that he and his sister would be deployed, but there was a delay in the deployment and that they would have to wait. They were promised to leave around January 2007. When they were still not deployed on the said date, private complainant Fuentes opted to refund the placement fee he paid SCLAMCOR. Accused Salilin promised to return the money, but even after SCLAMCOR closed in May 2007, the money was not yet returned.

For the defense, appellant<sup>[12]</sup> was presented as the lone witness.

Appellant interposed the defense of denial of any participation in the application for deployment of private complainants. In the first place, she cannot be held liable for illegal recruitment considering that SCLAMCOR is a licensed recruiter for land-based overseas employment, as evidenced by a Certification<sup>[13]</sup> dated June 14, 2007 issued by the Philippine Overseas Employment Agency (POEA). Moreover, by their own admissions, private complainants Helen Paras and Michael Narly Fuentes both have no direct transactions with appellant. Instead, they talked and gave their payments to accused Angelita Palabay and Rolando Salilin, respectively. Appellant has no personal participation in their job application. As a matter of fact, appellant only knew private complainants because they filed the criminal complaints against her. Finally, at the time private complaint Paras paid her placement fee to accused Palabay in August 2006, the latter had already resigned from SCLAMCOR, as evidenced by her letter resignation<sup>[14]</sup> dated June 29, 2006. Anent accused Salilin, he was never an employee of SCLAMCOR, as evidenced by a Certification<sup>[15]</sup> dated June 14, 2007 issued by the POEA stating that accused Rolando Salilin is not an employee of the said agency.

In a Joint Decision<sup>[16]</sup> dated January 31, 2013, the court *a quo* found appellant guilty beyond reasonable doubt of the crime of simple illegal recruitment. It was not disputed that private complainants Michael Narly Fuentes and Helen Paras went to SCLAMCOR, the recruitment agency where appellant served as president to apply for work as factory workers in Pusan, Korea. Private complainants respectively paid the processing fees amounting to P85,000.00 to SCLAMCOR, but they were not deployed as promised. They demanded the return of the money in vain. To this, all that appellant could offer in her defense is a feeble denial of any knowledge in the

transactions of private complainants with SCLAMCOR which cannot stand against the positive testimonies of the prosecution witnesses. The pertinent portions of the decision are quoted:

In her bid to exculpate herself, accused Molina while admitting the fact that she was then the President and Chief Executive Officer of SCLAMCOR at the time material to these cases, asserts that she had no knowledge nor participation in receiving the money allegedly paid by the complainants. This self-serving declaration of her cannot stand against the prosecution witnesses' positive identification of her in court as the person who headed the recruitment agency called SCLAMCOR, and who even attended to them when they were making their follow-up of their application, as well as induced them to have patience in waiting for their deployment.

While it may be true that it was Rolando Salilin and Angelita Palabay who personally received the money parted by the private complainants, which money they handed upon the misrepresentation and false promise that they will be deployed as factory worker to Pusan, Korea, the vouchers x x x evidencing the receipt of the same clearly show that it was received in behalf of SCLAMCOR of which the accused Molina was admittedly the President and who had control over her employees. Besides, the transaction consisting of the recruitment of the private complainants, who were even made to undergo training in Korean language, as well as the parting of their money, all took place in the office of the accused at SCLAMOR. Hence, it is preposterous for her to claim that she did not know about the collection of money made by Salilin and Palabay.

Her excuse that she could not be held liable for the act of Rolando Salilin in collecting money from Fuentes because Salilin was never her employee nor a relative of her is an uncorroborated and self-serving assertion of facts that doesn't inspire belief. While Salilin's name does not appear in the employees list submitted with the POEA, this does not mean that he was not an agent or employee of the accused Molina and/or SCLAMCOR. A person would not dare hold office and transact business at another's office, if there is no imprimatur from the owner of the office. As a matter of fact, in answer to clarifying question from the court, Molina admitted that she did not even submit the complete names of her employees with the SSS. Consequently, it is not far-fetched to say that he did not also submit the complete list of the names of her employees to the POEA.

Regarding her claim that Angelita Palabay, her former Executive Secretary, had already resigned from SCLAMCOR when she received or collected the money from the private complainant Helen Paras, the same was not substantiated. No officer from the POEA was presented to authenticate the alleged receipt of the report of resignation x x x. The said document is in the category of a private document under Rule 132, Section 27 of the Rules on Evidence x x x. Regrettably, the defense did not bother to comply with the requirement of proof of official records under the said rule. It is doubtful whether the said document actually exists in the files of the POEA as such fact was not proven. Besides, the alleged resignation of Palabay is immaterial to the fact in issue which is the receipt of the money. The positive testimony of the private

complainant Paras that she gave the money to Palabay must prevail as against the uncorroborated and self-serving claim of accused Molina that she did not know about the transaction. For if, indeed, Molina believes that Paras did not pay, then why did she assure her that she will be able to leave for Korea sooner or later.

Moreover, the prosecution witnesses Michael Narly Fuentes and Helen Paras were categorical in their statements that the accused assured them of their deployment and even implored them to just wait for a little period of time. Between these positive statements of the prosecution witnesses, on the one hand, and the bare denial of accused Molina, on the other, the former prevails. An affirmative testimony is far stronger than a negative testimony especially when it came from the mouth of a credible witness. Denial, as in alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted.

Verily, in the absence of any evidence that the prosecution witnesses were motivated by improper motives, the court has to accord full faith and credit to the verity of these witnesses' claim. Besides, it appears from the evidence adduced that the recruitment of the private complainants including their subsequent payments of money for the related deployment expenses were all done with the imprimatur of the corporation called SCLAMCOR headed by accused Molina. Hence, being the head of the said recruitment agency and who has control, direction and management of its business, the accused Molina is the one criminally liable for the acts of illegal recruitment imputed against the corporation or its agents as clearly prescribed under Section 6 of Republic Act No. 8042.

x x x

Applying the Indeterminate Sentence Law x x x the accused should suffer a prison term of six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P200,000.00.

On the civil aspect of the cases, the accused is also liable to pay whatever amount that the two private complainants have aid in connection with their application for employment abroad.<sup>[17]</sup>

Aggrieved, appellant filed the instant appeal raising the lone **ASSIGNMENT OF ERROR**<sup>[18]</sup>, to wit:

**THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED WHEN HER GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.**

#### **THE ISSUE**

The focal issue in this case is whether or not the court *a quo* correctly found appellant guilty beyond reasonable doubt of the crime of simple illegal recruitment.